

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BANK ONE DEARBORN, N.A.,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
WACHOVIA BANK, N.A. and GARANTI BANK,	:	
Defendants,	:	
	:	No. 03-6575
v.	:	
	:	
GM PLANWORKS,	:	
Third-Party Defendant.	:	

MEMORANDUM AND ORDER

Schiller, J.

January 11, 2005

Plaintiff Bank One Dearborn, N.A. ("Bank One") brings this action against Defendants Wachovia Bank, N.A. ("Wachovia") and Garanti Bank ("Garanti") seeking to recover the value of a check disbursed to an unauthorized payee. Bank One alleges that Garanti and Wachovia breached their warranties under the Uniform Commercial Code ("U.C.C.") in the course of transferring and presenting the check for payment. Presently before this Court are Bank One and Wachovia's cross-motions regarding the applicability of the U.C.C. to this transaction.¹ For the reasons set forth below, the Court finds that Wachovia is bound by the warranty provisions of the U.C.C. regardless of its compliance with international banking practices. Accordingly, Bank One's motion is granted and Wachovia's motion is denied.²

¹ On November 9, 2004, a telephone conference with the parties made clear that whether the U.C.C. applies to this case is a central legal issue in dispute. The Court then ordered Bank One and Wachovia to file these motions. (Order of Nov. 9, 2004.)

² Bank One's motion is directed at Wachovia only. Garanti, however, filed a response to Bank One's motion in which it argues that it is not bound by the U.C.C. warranties and attempts

I. BACKGROUND

The following undisputed facts trace the path of the check in question as it wended its way from bank to bank and came to be paid to an unintended recipient. On December 4, 2002, Bank One's customer, GM Planworks ("Planworks"), drew a check on its account at Bank One in the amount of \$786,780.11. (Am. Compl. Ex. A (Planworks check).) Bank One alleges that the check's initial payee was "Time, Inc.," but that an unknown third party stole the check before it reached Time and made it payable to "Murat Okay." (*Id.* ¶¶ 2, 7.) This third party endorsed the check as "Murat Okay" and brought it to Garanti, a bank located in Istanbul, Turkey. (*Id.* ¶ 8; Garanti Ans. ¶ 8.)

Perhaps suspecting that all was not, in fact, okay, Garanti did not immediately credit payment to the third party's account. Rather, on December 24, 2002, Garanti forwarded the check to Wachovia for collection together with a remittance letter containing the notation: "Subject to the uniform Rules for collection Last Publication of ICC [International Chamber of Commerce]." (Wachovia's Mot. that URC 522 Governs the Underlying International Transaction in this Case Ex. C (Remittance Letter) [hereinafter "Wachovia Mot."].) Upon reviewing the check, Wachovia employees observed that "the payee appear[ed] to be altered." (Bank One's Mot. for Partial Summ. J. Ex. A (Wachovia E-Mail Exchange) [hereinafter "Bank One Mot."].) Nonetheless, on December

to join in Wachovia's motion. As Bank One has not had an opportunity to address Garanti's contentions, the Court will not decide that issue today. Nonetheless, the Court observes that pursuant to the U.C.C.'s choice of law requirements, the fact that Garanti is located in Turkey suggests that Turkish law alone governs its activities in this transaction. U.C.C. § 4-102(b) (2004) ("The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located.") Bank One, which concedes that Turkey has not adopted the U.C.C., will thus be unable to sustain its U.C.C. claim against Garanti unless it successfully argues for the application of domestic rather than Turkish law.

31, 2002, Wachovia's Philadelphia International Operations Center submitted the check to Bank One under cover of a document stating:

“SUBJECT TO UNIFORM RULES FOR COLLECTIONS (1995 REVISION)
INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 522”
WE ENCLOSE FOR COLLECTION AND FINAL PAYMENT ONLY

(Wachovia Mot. Ex. B (Collection Instruction).) This cover document did not state Wachovia's concern that the payee appeared to be altered. Moreover, Wachovia had affixed a stamp to the back of the check which read “Prior Endorsement Guarantee. For Collection and Final Payment.” (*Id.*)

Bank One received Wachovia's submission on January 9, 2003. (*Id.* Ex. F (Memo dated March 13, 2003).) Thereafter, pursuant to its domestic collections procedures, Bank One endeavored to verify the check by, inter alia, examining stop payment history, comparing the endorsement on the back of the check with the name of the payee on the front, and matching the signature card for the account with the signature on the check. (Tice Decl. ¶ 6.) These verification procedures did not include contacting Planworks to confirm the payee. (*Id.* ¶ 9.) At that time, Planworks subscribed to Bank One's “Positive Pay” service, whereby Planworks electronically submitted data to Bank One regarding batches of checks that it issued; this data included the check numbers and the amount of each check, but not the identity of any payees. (*Id.* ¶ 5.) Where a customer subscribes to “Positive Pay” and the presenting bank does not specifically indicate a concern about fraud or alteration, Bank One's position is that payee issues are a “customer problem.” (Wachovia Mot. Ex. F.)

Finding nothing awry with the Planworks check, Bank One proceeded to issue payment to Wachovia. (*Id.*) Wachovia then issued payment to Garanti, which in turn credited the account of “Murat Okay.” (Am. Compl. ¶ 11; Wachovia Ans. ¶ 11.) Bank One contends that, subsequently, the true payee notified Planworks that it had not received payment. (Am. Compl. ¶ 12.) Bank One

further contends that, upon investigation, Planworks discovered that the wrong payee had been credited and demanded \$786,780.11 in reimbursement from Bank One. (*Id.* ¶¶ 12-13.)

II. DISCUSSION

Bank One ultimately seeks to recover \$786,780.11 from Wachovia on the theory that Wachovia breached its warranties of presentment under the U.C.C. (*Id.* ¶¶ 14, 16.) In its current motion, Bank One asks the Court to find that Wachovia is bound by these warranties. Wachovia, in turn, requests a finding that Rule 522 of the International Chamber of Commerce Uniform Rules for Collections (“URC 522”), rather than the U.C.C., governs this case in its entirety. For the reasons that follow, the Court holds that the U.C.C. warranties of presentment apply to this transaction.

A. The U.C.C. Warranties of Presentment

Articles 3 and 4 of the U.C.C., as codified by individual states, govern the collection and payment of checks in the United States.³ Article 3 applies to “negotiable instruments,” including checks. U.C.C. §§ 3-102(a), 3-104; 13 PA. CONS. STAT. §§ 3102(a), 3104. Article 4 “defines rights between parties with respect to bank deposits and collections.” U.C.C. § 4-101 cmt. 3; 13 PA. CONS. STAT. § 4101 cmt. 3. To the extent an item within Article 4 is also within Article 3, it is subject to

³ For purposes of the instant motions, the Court assumes that Pennsylvania’s codification of the U.C.C. applies to this case and includes citations to Pennsylvania’s parallel statutory provisions. Under the choice of law provision in Article 4 of the U.C.C., Wachovia’s liability is governed by the law of the place where the branch responsible for its action or non-action is located. U.C.C. § 4-102(b); 13 PA. CONS. STAT. § 4102(b) (2004). As the parties have not disputed that the Planworks check was sent to Bank One from Wachovia’s international operations center in Philadelphia (*see* Wachovia Mot. Ex. B), the Court will apply Pennsylvania law to resolve the matter at issue.

both provisions, although Article 4 controls in case of a conflict. U.C.C. § 4-102(a); 13 PA. CONS. STAT. § 4102(a). Thus, both articles are relevant where one domestic bank submits a check to another for collection.

Articles 3 and 4 each include presentment warranties under which a bank presenting a check for payment warrants that it has not been altered. *Wachovia Bank, N.A. v. Fed. Reserve Bank of Richmond*, 338 F.3d 318, 321 (4th Cir. 2003) (citation omitted). These warranties, in pertinent part, are identical and read as follows:

If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that: . . . (2) the draft has not been altered.

U.C.C. §§ 3-417(a), 4-208(a); 13 PA. CONS. STAT. §§ 3417(a), 4208(a). The warranties “shift[] losses up the collection scheme to presenting and depository banks.” *Wachovia Bank*, 338 F.3d at 321. Furthermore, the warranties “cannot be disclaimed with respect to checks.” U.C.C. §§ 3-417(e), 4-208(e); 13 PA. CONS. STAT. §§ 3417(e), 4208(e). Where the warranties have been breached, a bank that pays the check in good faith may recover damages against the presenting bank. *Wachovia Bank*, 338 F.3d at 321; U.C.C. §§ 3-417(b), 4-208(b); 13 PA. CONS. STAT. §§ 3417(b), 4208(b).

These warranties are directly applicable to the transaction at issue between Wachovia and Bank One. Under the plain language of the U.C.C., Wachovia, in presenting the Planworks check to Bank One for collection and final payment, warranted that the check had not been altered. U.C.C. §§ 3-417(a), 4-208(a); 13 PA. CONS. STAT. §§ 3417(a), 4208(a). Bank One, the drawee bank, paid the check upon receiving it from Wachovia. Therefore, if it is proven that the payee on the check

was in fact altered, then Wachovia breached its presentment warranties under the U.C.C.⁴

B. International Banking Practices

Wachovia argues, however, that the U.C.C. presentment warranties are inapplicable here because this transaction is governed exclusively by URC 522. Wachovia's contention is based on language included in the forwarding document sent to Bank One, which stated that the check was for "collection and final payment only" and "subject to [URC 522]." Although Wachovia has shown that, indeed, it submitted the check in accordance with recognized international banking practices, the Court holds that those practices did not and could not displace the U.C.C. warranties of presentment.

1. URC 522

URC 522 is a publication issued by the International Chamber of Commerce that sets forth a code of practice for international collection transactions. (Wachovia Mot. Ex. A (URC 522)); *see also Scadif, S.A. v. First Union Nat'l Bank*, 208 F. Supp. 2d 1352, 1362 (S.D. Fla. 2002), *aff'd* 344 F.3d 1123 (11th Cir. 2003) (observing that URC 522 embodies procedures "developed and adopted by banks around the world who are engaged in international banking"). URC 522's procedures apply to all international collections, "unless otherwise expressly agreed or contrary to the provisions of a national, state or local law and/or regulation which cannot be departed from." (Wachovia Mot. Ex.

⁴ Notably, there are "several defenses" available to banks that breach their presentment warranties. *Wachovia Bank*, 338 F.3d at 322 (stating that a presenting bank may defend a breach of warranty action on the ground that the paying bank lacked good faith or where the drawer's failure to exercise ordinary care substantially contributes to an alteration); *see also Hartford Accident & Indem. Co. v. First PA. Bank, N.A.*, 859 F.2d 295, 297 (3d Cir. 1988) ("A payor bank may recover for breach of warranty against material alteration only if the item was paid in good faith."). These defenses reflect the principle that "the U.C.C. does not impose liability on presenting banks if a loss is more appropriately borne by other parties," *Wachovia Bank*, 338 F.3d at 322, and Wachovia is free to raise them at an appropriate time.

A art. 1(a).) Under URC 522, a “collection” is defined as the handling by banks of documents, such as checks, in accordance with instructions received, in order to: (1) obtain payment and/or acceptance; (2) deliver documents against payment and/or against acceptance; or (3) deliver documents on other terms and conditions. (*Id.* Ex. A art. 2(a-b).) A bank sending a check for collection under this rule must send with it “a collection instruction indicating that the collection is subject to URC 522.” (*Id.* Ex. A art. 4(a).) When a check is accompanied by a collection instruction but without commercial documents, the transaction is known as a “clean collection.” (*Id.* Ex. A art. 2(c).)

In this case, there is no dispute that Wachovia sent Bank One a clean collection pursuant to international banking practices. Rather than immediately crediting the Planworks check back to Garanti, Wachovia instead submitted it to Bank One, the drawee, for “collection and final payment only.” (*Id.* Ex. B.) The check was not accompanied by anything except a cover letter, which specifically stated that the check was to be processed subject to URC 522. (*Id.*) Upon receipt of the check, Bank One did not question or object to processing it in this fashion, but rather handled the collection and issued payment to Wachovia. (*See id.* Ex. A art. 1(c) (“If a bank elects, for any reason, not to handle a collection or any related instructions received by it, it must advise the party from whom it received the collection or the instructions . . . without delay.”).) Therefore, this transaction was a clean collection in accordance with “existing and long standing custom and usage of trade among banks.” *Scadif* 208 F. Supp. 2d at 1362.

2. *The Effect of URC 522 on the U.C.C. Presentment Warranties*

Compliance with international procedures, however, cannot extinguish Wachovia’s domestic warranty obligations. Wachovia contends that the U.C.C. does not apply to this transaction because

Bank One agreed to proceed under URC 522 and because, in general, the provisions of the U.C.C. may be varied by agreement. *See* U.C.C. § 1-201; 13 PA. CONS. STAT. § 1201. Rather than pointing to a particular clause in URC 522 that is purportedly at odds with the U.C.C. warranties, Wachovia argues more broadly that, by following URC 522, the parties agreed to reject the U.C.C. in its entirety. (*See* Wachovia Opp’n to Bank One Mot. at 4-5.) This assertion is untenable because there are portions of the U.C.C. that cannot be altered, regardless of any agreement. Article 1 of the U.C.C. states that “[t]he effect of provisions of this Act may be varied by agreement, *except as otherwise provided in this Act* and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Act may not be disclaimed by agreement” U.C.C. § 1-102(3) (emphasis added); 13 PA. CONS. STAT. § 1102(3). Article 1 therefore articulates a general exception to the U.C.C.’s principle of freedom of contract and indicates that specific exceptions to that principle are found elsewhere in the statute. *See* U.C.C. § 1-102 cmt. 2; 13 PA. CONS. STAT. § 1102 cmt. 2. The warranties of presentment contain such a specific exception to variation by agreement, for Articles 3 and 4 clearly state that those warranties “cannot be disclaimed with respect to checks.” U.C.C. §§ 3-417(e), 4-208(e); 13 PA. CONS. STAT. §§ 3417(e), 4208(e).

The only U.C.C. clause that might conflict with the statement that the warranties “cannot be disclaimed” appears in Article 4’s introductory provisions and definitions. There, the statute provides that “[t]he effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank’s responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure.” U.C.C. § 4-103(a); 13 PA. CONS. STAT. § 4103(a). This clause does not mention an inability to alter Article 4’s presentment warranties. Standing alone, then, § 4-103(a) suggests that banks may vary from those

requirements. Moreover, if read in this fashion, § 4-103(a) would presumably allow variance from the warranties in both Article 3 and Article 4, as Article 4 trumps Article 3 in cases of conflict. *See* U.C.C. § 4-102(a); 13 PA. CONS. STAT. § 4102(a).

Yet, the apparent discrepancy can readily be reconciled by reading the clause that the presentment warranties cannot be disclaimed as an exception to § 4-103(a)'s broad permission to vary. "It is a fundamental rule of statutory construction that all parts of a statute must be read together . . . [and] [c]ourts should attempt to reconcile two seemingly conflicting statutory provisions whenever possible, instead of allowing one provision effectively to nullify the other provision." *United States v. Gordon*, 961 F.2d 426, 431 (3d Cir. 1992); *see also United States v. Landmesser*, 378 F.3d 308, 312-13 (3d Cir. 2004) (stating that basic tenants of statutory construction require that attention be paid to a text's entirety and that interpretations be avoided which render any phrase superfluous). In line with these principles, the Court declines to read the overarching power to vary articulated in § 4-103(a) as effectively nullifying the language that presentment warranties "cannot be disclaimed with respect to checks." Instead, the Court reads § 4-103(a) as setting forth a general rule concerning variation which left room for the specific exception on presentment warranties. *See, e.g., Mele v. Fed. Reserve Bank of New York*, 359 F.3d 251, 255 (3d Cir. 2004) (reading specific provision in paragraph five of Federal Reserve Act as limitation on general power articulated in paragraph three of Act). Thus, notwithstanding the broad language of § 4-103(a), both §§ 3-417(e) and 4-208(e) prevented the parties from disclaiming the presentment warranties here.⁵

⁵ Wachovia also contends that the non-disclaimer language of U.C.C. §§ 3-417(e) and 4-208(e) does not apply to this transaction because a disclaimer is by definition a unilateral rather than a bilateral act. (*See* Wachovia Opp'n to Bank One Mot. at 3.) In essence, Wachovia's position is that it could not have "disclaimed" the warranties of presentment because Bank One agreed to reject those warranties by proceeding under URC 522. (*Id.*) This position is at odds

Because presentment warranties on checks cannot be disclaimed, the *Scadif* case is of little help to Wachovia. That case, upon which Wachovia relies extensively, involved an alleged breach of the U.C.C.'s midnight deadline rule, under which a payor bank must return a check by midnight of the banking day following presentment. *See* U.C.C. § 4-302(a); 13 PA. CONS. STAT. § 4302(a). The district court granted summary judgment for the defendant, First Union, holding that the midnight deadline rule could be varied by agreement, and indeed, had been varied by international practice in that instance. *Scadif* 208 F. Supp. 2d at 1372. *Scadif* however, is easily distinguishable because although the midnight deadline rule can be varied by agreement, the presentment warranties on checks cannot. The *Scadif* court itself recognized this distinction, observing that a U.C.C. section expressly prohibiting variation was “a circumstance not at issue” in that transaction. *Id.* *Scadif*, therefore, does not provide support for Wachovia's contention that URC 522 displaced the non-disclaimable warranties of presentment. *See Integrated Measurement Sys., Inc. v. Int'l Commercial Bank of China*, 757 F. Supp. 938, 949 (N.D. Ill. 1991) (stating international banking practice rule codified by International Chamber of Commerce could not apply to transaction to extent terms of rule would vary U.C.C. provisions that themselves do not permit variance); (*see also* Wachovia Mot. Ex. A art. 1(a) (noting URC 522 not binding where contrary to provisions of national, state or local law and/or regulation which cannot be departed from)).

The facts of *Scadif* also render that case inapposite to the instant action. In *Scadif*, First

with the plain text of the U.C.C., which employs the word “disclaimer” to refer to acts performed by parties acting in concert. *See, e.g.*, U.C.C. § 1-102 (discussing provisions of the U.C.C. which “may not be disclaimed by agreement”); U.C.C. § 4-103 (stating that “the parties to an agreement cannot disclaim” certain responsibilities). Thus, even if Wachovia is correct that Bank One agreed to reject the warranties of presentment, such an agreement was an impermissible disclaimer under the clear language of the U.C.C.

Union delayed returning the check because it had been sent to them by another bank “for collection.” *Scadif*, 208 F. Supp. at 1358-59. After several days, First Union notified the sending bank that the check was being returned unpaid because of a stop payment on the item and a discrepancy in the written and numerical amount of the check. *Id.* at 1360-61. As the *Scadif* court pointed out, applying the U.C.C.’s midnight deadline rule to this type of transaction would have defeated the transaction’s purpose:

Banks would be forced to reject or pay items without themselves obtaining certainty of the validity of their actions. The presenting banks would be held strictly accountable for the payment of funds but would lack the ability to seek return of funds paid on defective or fraudulent items. This would encourage - even compel - banks to return unpaid items when they could not verify them in time to meet the midnight deadline rule.

Id. at 1370. By contrast, applying the U.C.C. warranties of presentment to all domestic collection transactions creates an additional layer of verification that serves to prevent fraud. Here, for instance, had Wachovia understood that these warranties applied to this transaction, it might have explicitly communicated to Bank One its suspicion that the payee on the check “appear[ed] to be altered.” (Bank One Mot. Ex. A.) Such an obvious warning, one hopes, would have prevented Bank One from crediting the check to the wrong payee.

Accordingly, although it processed the Planworks check via international collection practices, Wachovia is nonetheless bound by the U.C.C. warranties of presentment.

III. CONCLUSION

For the reasons stated above, Bank One’s motion is granted and Wachovia’s motion is denied. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**BANK ONE DEARBORN, N.A.,
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**WACHOVIA BANK, N.A. and GARANTI BANK,
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**GM PLANWORKS,
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CIVIL ACTION

No. 03-6575

ORDER

AND NOW, this 11th day of **January, 2005**, upon consideration of Plaintiff Bank One Dearborn, N.A.'s and Defendant Wachovia Bank, N.A.'s cross-motions and the responses thereto, following oral argument on January 6, 2005, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Plaintiff Bank One Dearborn, N.A.'s Motion for Partial Summary Judgment on Applicability of U.C.C. Warranties (Document No. 31) is **GRANTED**.
2. Defendant Wachovia Bank, N.A.'s Motion that URC 522 Governs the Underlying International Transaction in this Case (Document No. 33) is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.